HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT PETITION No. 13283 of 2007

Date 11-9-2007

Between:
The State of Andhra Pradesh
Rep. By its Principal Secretary to Government,
Backward Class Welfare(A2) Department,
Secretariat, Hyderabad and others.

……PETITIONERS

AND

Smt. K.K. Kruthika and others.

……..RESPONDENTS

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT PETITION No.13283 of 2007

ORDER: (per Smt. T.Meena Kumari,J)

The Department filed the present writ petition seeking a writ of Certiorari to call for the records relating to O.A. No. 2970 of 2003, dated 9.11.2006 of the Andhra Pradesh Administrative Tribunal Hyderabad and to quash the same.

By the order impugned, the Tribunal set aside the provisional seniority list of Grade II Hostel Welfare Officers (previously Grade II Wardens/Matrons) issued by respondents 3 and 4 in Rc.No.A/571/2004 dated 15.5.2004 as being contrary to the A.P. Backward Classes Welfare Subordinate Service Rules, 1996 and other orders connected therewith.

The respondents herein are working as Hostel Welfare Officers Grade-I. Initially, Social Welfare Subordinate Service Rules, which were framed, vide G.O.Ms. No. 615, dated 24.3.1972 were applicable for appointment of Wardens and Matrons of B.C. welfare Hostels. However in the year 1987, the Government issued Memo No. 146, Social Welfare dated 27.4.1987 clarifying that in Girls' Hostel only Matrons should be posted and based on that the then Director of Social Welfare issued a clarification stating that Matrons' seniority list should be maintained separately. In the year 1992, the Government vide G.O. Rt. No. 559, dated 23.6.1992, upgraded about 195 posts of Grade –II wardens/Matrons as Grade-I for providing promotional avenues to Grade-II Wardens/Matrons besides upgrading six posts of Grade-II Wardens/Matrons in Kurnool District. Thereafter, the Government again issued another clarification with regard to the ratio to be fixed between Grade-II Wardens and Matrons based on the number of boys and girls hostel in a District for promotion to the post of Grade Wardens and Matrons, and directed the

Collector to fix up the number of Grade-II Wardens/Matrons posts for upgradation separately on prorata basis keeping in view the number of B.C. Boys Hostels and B.C. Girls Hostels in the District. Thereafter on 16.3.1993 the Government issued proceedings stating thus:

> "The attention of the District Social Welfare Officer (BCW), Ranga Reddy District is invited to the references cited and he is informed that as there are no qualified Gr.II Matrons for promotion as Gr.I Matrons posts, her proposal to give promotion to Gr.II warden is accepted as a temporary measure. However, whenever a Gr.II matron is qualified in her District and becomes eligible for promotion as Gr.I Matron, the warden Gr.II who is temporarily promoted to the post of Gr.I shall be reverted and the(lady) Matron be promoted as Gr.I Matron."

Subsequently, the social welfare department has been trifurcated into Social Welfare Department, Tribal Welfare Department and Backward Class Department. However, when a writ petition was filed before this Court earlier, with regard to the atrocities committed by male wardens in the girls hostels, this Court issued directions to the Government not to post any male warden in the girls hostels and only matrons be posted. Pursuant to the directions of this Court, the Government of Andhra Pradesh has taken a decision not to post any Warden(Male) in the Girls Hostels. Thereafter, the Government issued G.O. Ms. No.17, dated 1.5.2002, re-designating the cadre of Warden/Matron as "Hostel Welfare Officers". Consequent upon re-designation of Matrons and Wardens as Hostel Welfare Officers, Commissioner of Backward Class Welfare, Hyderabad, petitioner No.2 herein, issued a Memo RC No. A110355/99, dated 8.10.2002 stating that there is no rationale in maintaining seniority lists for Grade-II wardens and Matron separately. Accordingly, he directed the District Collector (B.C. Welfare), Kurnool and the District Backward Class Welfare Officer, Kurnool, petitioners 3 and 4 herein to prepare a common seniority list of Wardens and Matrons Grade II (Grade II Hostel Welfare Officers) working in the District. The 2nd petitioner has issued further proceedings vide memo dated 15.3.2003 directing the petitioners 3 and 4 herein to review the promotions already given basing on the common

seniority list. By virtue of the aforesaid orders, the 1st respondent who was promoted as Grade-I Hostel Welfare Officer (Matron) had to be reverted and she would be placed at Sl. No.41 in the common seniority list of Hostel Welfare Officer and the other respondents would not be in a position to get the promotion. Aggrieved by the same, they preferred O.A. No. 2970 of 2003 before the A.P. Administrative Tribunal, Hyderabad to call for the records relating to Memo Rc. No. A1/10344/99, dated 8.10.2002, memo Rc. No. A1/9993/2002, dated 15.3.2003 of the second respondent and the consequential orders in Rc. No. A/78/2003, dated 26.4.2003 of the 3rd respondent and set aside the same by holding as arbitrary, illegal, violative of the A.P. Backward Classes Subordinate Service Rules, 1996 and the directions of the Hon'ble High Court in Writ Petition No. 21134 of 1976, dated 2.11.2000.

Before the Tribunal, the Department filed counter affidavit contending that the Government G.O. Ms. No. 615, Education (W) Department, dated 24.3.1972 have framed rules for recruitment to various posts and in the institutions of Social Welfare Department wherein the post of Wardens/Matrons was shown as Category-I and a clarification was issued in that regard. However, after bifurcation of Social Welfare Department into B.C. Welfare Department and Social Welfare Department, the Government issued G.O. Ms. No. 36, dated 9.7.1996 framing A.P. Backward Class Welfare Subordinate Service Rules. It is further stated that when the recruitment for both the categories is common, there is no rationale in maintaining seniority list for Grade-II Wardens/Matrons separately. Therefore, the Government issued instructions vide impugned memos and a common seniority list is being maintained.

The Tribunal having heard the learned counsel for the parties and having perused the material on record and the judgment of this Court in W.P. No.21134of 1997, allowed the O.As and set aside the impugned orders. Aggrieved by the same, the Department filed the present writ petition.

Learned Government Pleader for Services-II would contend that the distinction between warden and matrons as specified in G.O. Ms. No.36, dated 9.7.1996 is only to designate the appointment of Matron to Girls Hostels and it does not in any way hinder the preparation of common seniority list and nowhere in the said rules, it is mentioned that Wardens/Matrons are two different categories. He further submitted that even in respect of the post of Assistant B.C. Welfare Officer, a feeder post to Grade-I Hostel welfare Officer, no seniority list is maintained separately for Male and Female Categories. In those circumstances, the Tribunal ought not to have allowed the O.As. and prayed that the impugned order be set aside.

On the other hand, learned counsel for the respondents supported the impugned order and prayed that the writ petition be dismissed.

We also had an occasion to go through the Rules. Initially, when the Backward Class Department was a part of the Social Welfare Department, Social Welfare Subordinate Rules, which were issued vide G.O.Ms. No. 615, dated 24.3.1972 were applicable to the Backward Class department. However, after trifurcation, the Government issued separate service rules for Backward Class Department known as A.P. Backward Classes welfare Subordinate Service Rules, 1996. Rule 3 of the said Rules reads thus:

Category	Method of Appointment	Appointing Authority
(1)	(2)	(3)
Class A:		
1. Asst. Backward Classes welfare Officer	1. By direct recruitment 2. By promotion from category(2) in Class-A	Director of Backward Classes Welfare
2. (a) Warden Grade-I	(i) By promotion from category3(a)	Collector
(b) Matron Grade-I	(ii) By promotion from category 3(b)	

3(a) Warden Grade-II	(i) By direct recruitment (ii) By transfer from category (4) (iii) By promotion from category of Class IV employees of Backward Classes Hostels/departments) (added by G.O. Ms. No.4,BCW(A2), dt.18.1.2001)	Collector
(b)Matron Grade-II	(i) By direct recruitment (ii) By transfer from category(4) (iii) By promotion from category of Classes Hostels/Departments. (added by G.O. Ms. No.4,BCW(A2), dt.18.1.2001)	Collector
4. Teacher	xxx	xxx

There is no dispute about the fact that initially the Social Welfare Subordinate Rules were applicable to the Backward Class department and after trifurcation of the Social Welfare Department into Social Welfare Department, Backward Classes Welfare Department and Tribal Welfare Department, the Government, in exercise of its powers conferred under Article 309 of the Constitution of India issued special rules vide G.O. Ms. No.36, dated 9.7.1996 to Backward Classes Welfare department known as Backward Classes Welfare Subordinate Service Rules, 1996 (for short '1996 Rules') in supercession of the Social Welfare Subordinate Rules issued vide G.O. Ms. No. 615, dated 24.3.1972 (for short '1972 Rules'). Under the 1972 Rules, the post of Warden Grade I and II and Matron grade I and II belonged to Class A Category. However, under the 1996 Rules, though the post of Warden Grade-I and II and Matron Grade I and II belonged to Class-A category, there is a further classification under Class-A. Under Rule 3 of the 1996 rules, the category of Grade II Warden/Matrons which was shown as one category under the 1972 Rules, was categorized as two categories under Class A i.e. Categories 3(a) and Category 3(B). Category 3(a) is Warden Grade II and Category 3(b) is Matron Grade II. Though the qualifications prescribed for the two categories may be one and the same, but the distinction is that in respect of Category 2(b), as per Rule 5 of the 1996 Rules, only women

candidates shall be appointed. It may be noted that such distinction continued even in respect of Grade I Wardens and Grade I Matrons also. Grade I Wardens/Matrons which was shown as one category under 1972 Rules was categorized as two separate categories under 1996 Rules under Class A i.e. Category 2(a) and - Warden Grade I- and category 2(b) Matron Grade II. We may also take note that for promotion to Category 2(a) – Warden Grade I only from persons from category 3(a) i.e. Warden Grade II are made eligible. Similarly for promotion to category 2(b) – Matron Grade I only persons from category 3(b) – Matron Grade II are made eligible. Therefore, the intention of the rule making authority is crystal clear that only persons from the respective categories i.e. categories 3(a) and 3(b) are eligible to be promoted to the respective categories i.e. category 2(a) and category 2(b). To give effect to the said intention of the rule making authority, it is obvious that two separate seniority lists i.e. one for the persons working in category 3(a) and the other for the persons working in category 3(b) have necessarily to be prepared, otherwise it would be in violation of the rules. It may be that for further promotion to category Asst. Backward Class Welfare Officer which is by way of direct recruitment and also by promotion, a common seniority list of category 2(a) and category 2(b) may be necessary, but for promotion to the categories 2(a) and 2(b), separate seniority lists of Categories 3(a) and 3(b) have to be maintained.

The contention of the learned Government Pleader that the 1996 rules nowhere provides that Grade II Wardens/Matrons are two different categories is not correct. In fact the Special Rules, 1996 nowhere provides for preparation of a seniority list. But the general rule is that separate seniority list has to be prepared for each category unless the rules provide for preparation of a common seniority list in respect of two categories. When there is a clear distinction between the feeder categories i.e., categories 3(a) and 3(b), the department cannot maintain a common seniority list of wardens and Matrons. The Tribunal, therefore, taking all the aspects into consideration,

rightly dismissed the O.As.

In the circumstances, we do not find any reason to interfere with the impugned orders passed by the Tribunal. The writ petition fails and the same is accordingly dismissed. No costs.

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(T. MEENA KUMARI,J)

Date:11th September,2007

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(D. APPA RAO,J)

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